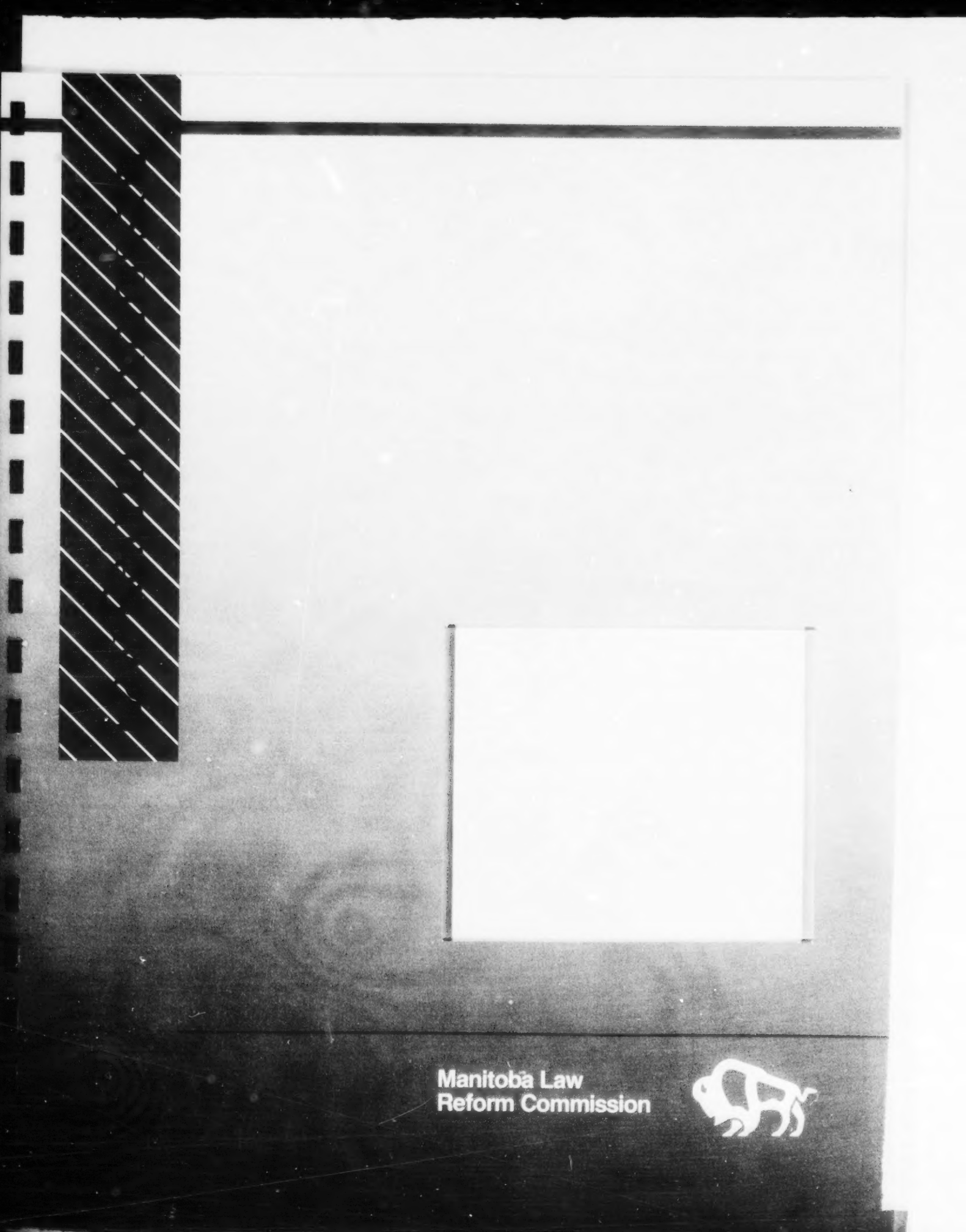
Manitoba Law
Reform Commission

REPORT

ON

THE MANITOBA LAW REFORM COMMISSION:

A Framework for the Future

November 23, 1988

Report #70

TABLE OF CONENTS

	Page #
CHAPTER 1 - INTRODUCTION	1
CHAPTER 2 - INSTITUTIONAL INDEPENDENCE	5
A. THE COMMISSION'S EXISTENCE	5
B. RELATIONSHIP WITH THE ATTORNEY GENERAL	7
C. THE COMMISSIONERS	8
D. THE STAFF	12
E. CONCLUSION	14
CHAPTER 3 - FINANCIAL INDEPENDENCE	15
A. SOURCE OF FUNDS	15
B. POWER TO SPEND	18
C. CONCLUSION	19
CHAPTER 4 - A NEW LAW REFORM COMMISSION ACT	20
CHAPTER 5 - CONCLUSION AND SUMMARY OF RECOMMENDATIONS	29
APPENDIX A - *THE LAW REFORM COMMISSION ACT*	32
APPENDIX B - PROPOSED DRAFT ACT: THE LAW REFORM COMMISSION ACT	36

CHAPTER 1

INTRODUCTION

The Attorney General of Manitoba has requested that the Manitoba Law Reform Commission recommend to him steps which can be taken in order to better assure the future existence and independence of the Commission. However, in order to fully understand the background to this reference, it is necessary to repeat some of the history of the Commission.

Law reform commissions were established in Manitoba and elsewhere in recognition of the fact that common law and statute law have traditionally been unable to keep up fully with ever-changing social conditions. That they are unable to do so should not be surprising. Much of our law is centuries old, originally developed in a piece-meal fashion to meet the needs of feudal England. Courts are only able to effect changes in the law as and when cases in troublesome areas happen to come before them; legislatures are inevitably preoccupied with issues having greater political interest. It was recognized that, without a permanent body charged with the task, large areas of the law requiring change would not attract the attention of politicians or government departments. Old inequities would be perpetuated; new inequities would arise.[1]

In response to these needs, the Manitoba Law Reform Commission was established by an Act of the Manitoba Legislature in 1970[2]; a copy of *The Law Reform Commission Act* is contained in Appendix A to this Report. The mandate of the Commission is set out in subsection 5(1) of the Act:

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[1]This is by no means intended to be a defence of law reform commissions in general. For a fuller discussion of the important role of law reform commissions, see, for example, W.H. Hurlburt, *Law Reform Commissions in the United Kingdom, Australia and Canada* (1986).

[2]*The Law Reform Commission Act*, R.S.M. 1987, c. L95.

The duties of the commission are to inquire into and consider any matter relating to law in Manitoba with a view to making recommendations for the improvement, modernization and reform of law, including, without limiting the generality of the foregoing

(a) the removal of provisions of the law that are outdated or inconsistent;

(b) the maintenance and improvement of the administration of justice;

(c) the review of judicial and quasi-judicial procedures under any Act;

(d) the development of new approaches to and new concepts of law in keeping with and responsive to the changing needs of society and of individual members of that society; and

(e) any subject referred to it by the minister.

Manitoba was not the first province to establish a law reform agency, nor has it been the last. Similar bodies exist in Ontario (established in 1964), Alberta (1967), British Columbia (1969), Saskatchewan (1971), Newfoundland (1971; activated in 1984) and the Northwest Territories (1986).[3] The Law Reform Commission of Canada was established in 1971 to deal with issues within federal jurisdiction. In addition, law reform agencies exist in many other Commonwealth and common law jurisdictions.[4]

The Manitoba Law Reform Commission operates through its commissioners and its staff. Although the Commission was originally composed of seven commissioners, that number was reduced to five in recent years, apparently for reasons of economy. All members of the Commission are appointed by the Lieutenant Governor in Council (the provincial Cabinet),

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[3]Law reform functions in Quebec are performed by the Office for the Revision of the Civil Code and in New Brunswick by the Law Reform Branch of the Attorney General's Department. The statutes of Nova Scotia and Prince Edward Island provide for law reform commissions, but those bodies are dormant.

[4]These include England and Wales, Scotland, Ireland, New Zealand, Australia (federal), New South Wales, Northern Territory (Australia), Queensland, South Australia, Tasmania, Victoria, Western Australia, Fiji, Papua New Guinea, Tonga, Gambia, Ghana, Kenya, Nigeria, Sierra Leone, South Africa, Tanzania, Uganda, Antigua, Bahamas, Jamaica, Trinidad and Tobago, Hong Kong, India, Malaysia, Nepal, Pakistan, and Sri Lanka.

which also designates one of the commissioners as chairman. Although the Act does not set out any requirements as to who should be a commissioner, recent tradition has dictated the appointment of at least one lawyer in private practice, one judge of the Court of Queen's Bench, one professor of the Faculty of Law at the University of Manitoba and one non-lawyer.[5] The commissioners set the policy of the Commission and decide upon the recommendations for changes in the law which will be made to the Attorney General. The staff of the Commission provide legal advice to the commissioners; they furnish the commissioners with the information necessary to enable them to make informed choices and write the Reports reflecting the decisions of the commissioners.

The Commission, as constituted in *The Law Reform Commission Act*, has in our estimation worked rather well since its inception in 1970. During that time, it has published 69 formal Reports and made 32 informal reports. Of those, over 80% have been implemented in one fashion or another by the provincial Legislature. A list of the legislation to which the Commission claims pride of parentage is set out in Appendix A of its most recent Annual Report.

Unfortunately, recent events revealed flaws in *The Law Reform Commission Act*. In December 1987, the government of the day announced that it had dismissed the commissioners and replaced them with senior members of the Department of the Attorney General. The staff of the Commission was to complete the remaining work of the Commission and, after a period of about a year and a half, the Commission was to be wound up. The two members of the Commission staff who had the status of civil servants were to be integrated into the Department; the other members of the staff, who held only the status of contract employees, were told that their contracts would not be renewed upon their expiration. The dissolution of the Commission was to be achieved administratively, without recourse to the Legislature.

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[5]Of the first seven persons to be appointed to the Commission, three were non-lawyers. The Commission has always been of the view that the presence of non-lawyers has been immensely useful. It prevents law reform from taking place in a "closed shop" and assists in making the Commission's reports more accessible to non-lawyers. It is, after all, their law too.

As noted in our most recent Annual Report, this decision was received most negatively, both within and without the legal community. Following a provincial election, the succeeding administration restored the Commission to its former status and requested that the Commission undertake this reference as its first priority.

While this recent history explains the motivation and need for this review, we hasten to add that we have not restricted ourselves to a search for measures to prevent a recurrence of the events of December 1987. Rather, we have undertaken a thorough reconsideration of all aspects of the constitution and operation of the Commission, including the method of appointment of commissioners, the relationship between the Commission and the Department of the Attorney General, funding, administrative control over the operations of the Commission and the status of the staff. We have attempted to look to the long-term, not the short; to be realistic, not idealistic.

In the succeeding chapters to this Report, we set out the specific measures which we believe are essential to ensure the future existence and independence of the Commission. We also provide some detail of the various other models which were considered and rejected. In Chapter 2, we discuss issues relating to institutional independence; in Chapter 3, we deal with the question of financial independence. Chapter 4 contains a draft Law Reform Commission Act to replace our existing statute. We conclude in Chapter 5 with some final observations respecting the operations of the Commission.

CHAPTER 2

INSTITUTIONAL INDEPENDENCE

We are generally satisfied with the existing structure of the Commission. It is fundamentally sound and has served our needs well. However, we propose certain changes in this chapter which we believe will better assure the future existence of the Commission and enhance its independence and performance.

A. THE COMMISSION'S EXISTENCE

At present, the Commission derives its existence from a statute of the Manitoba Legislature, *The Law Reform Commission Act*. Most other law reform commissions are similarly constituted. In the course of our deliberations, we considered alternative means by which the Commission might be constituted. For example, we noted that our counterpart in Alberta, the Institute of Law Research and Reform, is not the subject of any statute. Rather, it is created pursuant to renewable five-year agreements between the Government of Alberta (through its Attorney General's Department), the Law Society of Alberta and the University of Alberta. In New Brunswick, law reform is undertaken by a division of the province's Department of Justice; the division's existence is essentially a matter of executive decision.

Neither of these models recommend themselves to us. A law reform body whose existence is dependent upon the periodic renewal of an agreement would be plagued by instability; we fear that the apparent lack of permanence would seriously impair the important process of attracting and retaining high quality legal staff. A law reform body which is simply an adjunct to a provincial government department is liable to be tarred with the brush of partisanship; it will inevitably be viewed as an instrument of the political party in power and its advice to government will be regarded as suspect. Its existence would be even more impermanent than one founded upon a tripartite agreement.

In our view, it is essential that the Commission continue to be created pursuant to the terms of a statute of the provincial Legislature. Such a status provides the greatest degree of permanence possible. More importantly, the Commission's existence as a creature of government gives it the stature and credibility which is essential to its effectiveness. Creating the Commission by provincial statute is a signal to the public that, while there are many private interest or lobby groups which seek to change areas of the law, the Commission is the government's primary vehicle of law reform; it indicates that the public may take their concerns about aspects of the law to the Commission with the confidence that recommendations made by it will receive due consideration from the government. While there must be an appropriate distance from government (the nature of which will be discussed later in this Report), it is important that a meaningful nexus exist between the Commission and the government.

We therefore recommend:

RECOMMENDATION 1

That the Manitoba Law Reform Commission continue to be a body constituted by an Act of the Manitoba Legislature.

Of course, creating the Commission by statute of the Manitoba Legislature means that the Commission's existence can be terminated simply by repealing that statute. In our view, this is not inappropriate. It seems to us an essential part of the democratic process that the existence of any governmental body be subject to the continued confidence of the elected members of the Legislature. However, it is only the Legislature that should be able to abolish the Commission. It should not be possible for the executive (including the Cabinet) to frustrate the will of the Legislature and effect a back-door abolition by removing or replacing the commissioners or otherwise directing an alteration of the Commission's mandate.

We therefore recommend:

RECOMMENDATION 2

That in no case should the affairs or the duties of the Commission be wound up or altered unless the Legislature so provides.

B. RELATIONSHIP WITH THE ATTORNEY GENERAL

The relationship between the Commission and the Attorney General is one of its greatest sources of strength. *The Law Reform Commission Act* provides that the Commission shall make its reports to the Attorney General.[6] The Act also provides that the Commission shall include in its program any project requested by the Attorney General and shall give such projects special priority if so directed by the Attorney General.[7] We considered, and ultimately rejected, proposals that the Commission cease to report to the Attorney General and that it report instead directly to the Legislature (such as the Ombudsman does). However, we believe that reporting to the Attorney General is essential to the Commission's position as the government's primary vehicle of law reform. It increases the likelihood that the Reports of the Commission will be considered seriously by the government for implementation; this, in turn, increases the Commission's credibility with the public. It also provides a means by which the Attorney General and his Department can ensure that the Commission is responsive to the areas of the law which they perceive as being in need of reform, without infringing upon the Commission's independence (since the commissioners still bring their independent judgment to bear upon any topic so referred). Hopefully, the Commission's relationship with the Attorney General also means that he will act as an advocate of its interests at meetings of the Cabinet (though recent history teaches that this is not always so).

We recommend:

RECOMMENDATION 3

That the legislation creating the Commission continue to provide that it report to the Attorney General.

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[6]In fact, it provides that reports shall be made to the member of the Executive Council charged by the Lieutenant Governor in Council with the administration of the Act: ss. 1(a), 5(2). However, this has always been the Attorney General.

[7]s. 6(2).

The record of past Attorneys General exercising their power to refer topics has been uneven. We strongly urge future Attorneys General to take greater advantage of the availability of the Commission to address issues of legal policy of interest to the Minister and his Department.

C. THE COMMISSIONERS

The commissioners are the individuals who set the policy of the Commission. That is, the commissioners determine the recommendations for changes to the law which are to be made to the Attorney General. Accordingly, it is essential that the commissioners be individuals of ability and stature; they should be (and be seen to be) non-partisan in their work and should be representative of the legal community and of the public at large. At the same time, the members of the Commission must have the confidence of the Attorney General, his government and the members of the Legislature. While this might seem a bit daunting, the Commission has, in fact, been very fortunate in the calibre of person appointed to it over the course of its history. They have almost without exception met the high standards of non-partisanship, stature and broad-based representation which we seek. Our goal is to ensure that this crucial element of the Commission's success over the years continue.

At present, the commissioners are appointed by the provincial Cabinet upon the recommendation of the Attorney General. In our view, this is an appropriate method for the appointment of commissioners. While we gave serious consideration to an alternative proposal whereby the power to make some or all of the appointments to the Commission would be transferred to groups or individuals outside of government (such as the Faculty of Law at the University of Manitoba or the Law Society of Manitoba), we decided not to follow this approach. Although it is argued that such a scheme would take the politics out of the appointment process, we believe that it is fairer to say that it would only move the politics from a public to a private forum. Appointments by elected officials may from time to time be criticized for

being partisan (though, happily, this has rarely been the case with the Commission). However, to the extent that politics play a role in an appointment, that political influence is at least clear for all to see; public criticism of bad appointments can be made and elected officials can be held to account by the Legislature and the electorate. We therefore recommend:

RECOMMENDATION 4

That the members of the Commission continue to be appointed by the Lieutenant Governor in Council on the advice of the Attorney General.

Similarly, the provincial Cabinet should continue to name the chairman of the Commission. We would, however, suggest that the position be renamed "president"; that title is less sexist and more bilingual.[8] We recommend:

RECOMMENDATION 5

That the Lieutenant Governor in Council, upon the recommendation of the Attorney General, designate one of the members of the Commission, who shall be a lawyer, to be its president.

As we indicated earlier in this Report, recent tradition has dictated that at least one judge, one law professor and one practising lawyer be named to the Commission. This has served us well by bringing to the Commission a diversity of viewpoints and is a tradition which should be continued. We also believe that it is important that we maintain the tradition that at least one member of the Commission be a non-lawyer. Law and law reform should not be the preserve of lawyers. The presence of non-lawyers on the Commission has had the very beneficial effect of bringing to the Commission's deliberations a wider perspective and has assisted in making the Commission's Reports more readable to the public.

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[8]The Law Reform Commission of Canada has used this title for some time.

We recommend:

RECOMMENDATION 6

That the Commission be composed of:

(a) at least one judge of the Court of Queen's Bench;

(b) at least one full-time member of the Faculty of Law of the University of Manitoba;

(c) at least one lawyer in private practice;

(d) at least one person who is not a lawyer; and

(e) such other persons as the Lieutenant Governor in Council may think fit.

An issue which is perhaps more important than the question of who will appoint the commissioners is the term for which those commissioners will serve. In order to further safeguard the independence of the Commission, the appointments of the commissioners should not be revocable except for cause.[9] They should hold office for fixed terms during good behaviour and those terms should be renewable. We would suggest that terms of three years are appropriate.

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[9]We note that the Ombudsman and the Chief Electoral Officer may be removed from office only upon a two-thirds vote of the Legislature: *The Ombudsman Act*, R.S.M. 1987, c. O45, s. 5; *The Elections Act*, R.S.M. 1987, c. E30, s. 5(3). Similar provisions may be found in *The Labour Relations Act*, R.S.M. 1987, c. L10, s. 138(3), *The Civil Service Act*, R.S.M. 1987, c. C110, s. 4(5) and *The Provincial Auditor's Act*, R.S.M. 1987, c. P145, s. 4(2).

Although we considered these models as methods by which the Commission's independence could be secured, we decided not to adopt them, in part because of concern about their constitutional validity. *The Legislative Assembly Act* provides that questions arising in the Legislative Assembly shall be decided by a majority of votes: R.S.M. 1987, c. L110, s. 9. The *Constitution Act, 1867* provides that questions arising in the House of Commons shall be decided by a majority of votes: s. 49. *The Manitoba Act, 1870* states that provisions in the *Constitution Act, 1867* respecting the mode of voting apply equally to the Manitoba Legislature.

We recommend:

RECOMMENDATION 7

That the members of the Commission hold office for fixed terms of three years during good behaviour.

RECOMMENDATION 8

That the members of the Commission be eligible for re-appointment.

We do not consider this Report to be the appropriate forum for a discussion of the remuneration which should be paid to the members of the Commission. This is a matter requiring flexibility to take into account changing circumstances. We would state that such remuneration should be reflective of the time and effort required by the position; to the extent that additional duties are undertaken, the president's remuneration should be commensurately greater than that of the other commissioners. The actual amounts should be set by the Lieutenant Governor in Council from time to time in consultation with the Commission. However, we recognize that reducing salaries is a means by which a future government might seek indirectly to abolish or otherwise diminish the Commission. Accordingly, we recommend:

RECOMMENDATION 9

That in no case should the remuneration paid to the members of the Commission be reduced unless the Legislature so provides.

We conclude this section with a word about the size of the Commission. *The Law Reform Commission Act* provides that the Commission is to consist of "not more than seven members".[10] Although the Commission did originally have seven members, in recent years only five commissioners have been appointed. Theoretically, there is no legal impediment to the appointment of only three commissioners at some point in the future. In our view, the successful operation of the Commission requires that there be enough commissioners to ensure lively and meaningful discussions of the issues before it. We believe that a Commission of seven members will best achieve this (the cost of increasing the Commission's membership from five to seven would be negligible). We recommend:

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[10] s. 2(1).

RECOMMENDATION 10

That the Manitoba Law Reform Commission be comprised of 7 members (commissioners).

Should this recommendation find favour, consideration should be given to the appointment of two non-lawyers to the Commission.

D. THE STAFF

The staff of the Commission play a vital role in its work, going well beyond the legal advice which they render to the Commission. Among other things, they undertake all of the research necessary to enable the commissioners to make informed policy decisions on appropriate changes in the law, write all working papers and Reports reflecting those decisions, perform most of the Commission's public relations work and attend to the general day-to-day management and administration of the Commission. The staff consists of lawyers (one of whom is the Director) and an Administrative Secretary.

Just as the future existence and independence of the Commission is dependent on safeguarding the position of the commissioners, so is it dependent on safeguarding the position of the staff. At present, the Commission's Director and Administrative Secretary are members of the civil service. However, the rest of the Commission's legal staff is hired on a contract basis only. They have no job security whatsoever and are not eligible for any of the benefits taken for granted by other government employees (such as pension, dental plan and the like).[11]

It has been argued that the Commission's staff should remain outside of the civil service in order to protect the independence of the Commission. We do not accept this view. Although the Commission's legal staff obviously

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[11]That they are contract employees outside of the civil service is quite anomalous. Most contract employees working for the provincial government are hired for specific projects to be completed within specific periods of time. The Commission's contract employees are not hired for any specific project and, once satisfactory performance is established, their contracts are routinely renewed.

have significant influence over the recommendations of the Commission on any given project, it is ultimately the commissioners who determine the recommendations to be made to the Attorney General. We fail to see how depriving staff members of security and benefits can be of assistance to the Commission. We note, for example, that members of the staff of the provincial Ombudsman (who surely require a measure of independence as great or greater than that required by the Commission) are members of the civil service. If the Commission is to attract the best legal staff possible, it must be in a position to offer some measure of job security and competitive benefits.

The salary paid to that legal staff must also be competitive. In our view, it should be no less than the salary paid to other lawyers employed by the Department of the Attorney General as Crown Attorneys. Indeed, the Commission has for many years paid its legal staff on the same scale on which the provincial government pays the members of the Manitoba Association of Crown Attorneys. This is appropriate and should continue.

We recommend:

RECOMMENDATION 11

That the staff of the Commission be members of the civil service.

RECOMMENDATION 12

That the level of remuneration and other benefits received by the legal staff of the Commission be no less than that received by members of the Manitoba Association of Crown Attorneys.

A further impediment to Commission independence exists in the restriction on the Commission's ability to hire staff. The Commission is presently precluded from hiring any employee without the personal authorization of the Attorney General. Similar restrictions apply to engaging of consultants. This is not an acceptable situation. If the Commission is to be independent, it should not be possible for an Attorney General to veto the hiring of an individual deemed by it to be the most capable for a position. So long as there is room in the Commission's budget to hire an employee or engage a consultant, we suggest that it should be free to do so.

Accordingly, we recommend:

RECOMMENDATION 13

That the hiring of staff members or consultants should be the responsibility of the Commission.

We conclude our discussions of staffing with one final (and somewhat personal) note. In 1986, an employee with over 15 years of service to the Commission on year-to-year contracts was permitted to join the civil service. However, she was denied any credit for her prior service, resulting in a loss of sick leave and vacation time. Furthermore, she was obliged to accept a reduced salary. This is an injustice which should not be visited upon the rest of our staff if and when they become members of the civil service.

We recommend:

RECOMMENDATION 14

That prior years of service to the Commission be fully recognized for the purpose of determining remmeration and other benefits when the staff of the Commission are admitted to the civil service.

We also express the hope that the injustice which has already been wrought can be rectified.

E. CONCLUSION

In this Chapter, we have set out the institutional framework within which we believe the goals of security and independence for the Commission can be achieved. It is a framework based upon the maintenance of high standards for the Commission's members and staff and upon respect for the democratic process. Most importantly, it attempts to balance the importance of a relationship between the Commission and the government with the need to avoid being smothered by the embrace.

A similar degree of financial independence is also needed to achieve the goals which have been set for us. We deal with this subject in the next Chapter.

CHAPTER 3

FINANCIAL INDEPENDENCE

No amount of institutional security and independence is meaningful unless the Commission also has a corresponding measure of financial security and independence. In this Chapter, we discuss the issues relevant to achieving this goal.

A. SOURCE OF FUNDS

Up until 1986, the finances of the Commission were exceedingly simple. Its entire budget was appropriated by the provincial government out of general revenues and approved by the Legislature in the course of its debate on the Provincial Estimates. An amount was provided for the operating costs of the Commission and a further amount was provided for its salary costs; the necessary staff years (SYs)[12] were also approved.

The method of financing the activities of the Commission underwent significant change in 1986 with the advent of the Manitoba Law Foundation. The Foundation was created in that year by the provincial Legislature for the purpose of promoting legal education, legal research, legal aid services, law reform and the development and maintenance of law libraries.[13] Its activities are funded by the interest income earned upon funds held in the

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[12]One employee working full-time for one year equals one staff year. In government, it is impossible to hire an employee (no matter how much money may be in your budget for the purpose) unless you have a corresponding SY. The ostensible purpose is to provide a check upon the growth of government.

[13]*The Law Society Act*, R.S.M. 1987, c. L100, s. 63.

trust accounts of lawyers. The legislation creating the Foundation provided for three categories of grants:

(1) Permanent mandatory grants. The board of the Foundation has no discretion with respect to these grants. It must make them each year in perpetuity. Only Legal Aid Manitoba and the Law Society of Manitoba fall into this category.

(2) Temporary mandatory grants. Again, the Foundation is legally obliged to make these grants. However, that obligation subsists only during the three fiscal years ending March 31 of 1987, 1988 and 1989. Thereafter, this category ceases to exist.

(3) Discretionary grants. Any individual or group may apply to the Foundation for funds for projects within the objects of the Foundation. The Foundation is free to grant or not grant such funds, as it determines in its sole discretion. The groups receiving temporary mandatory grants fall into this category after March 31, 1989.

Despite its protestations at the time, the Commission was placed into the second category. Accordingly, the legislation creating the Foundation provides that the Commission is to receive a grant of $100,000 for the three years ending March 31, 1989. The government of the day indicated that the receipt of Foundation moneys would benefit the Commission and would result in an enlarged budget which could be used to hire consultants.[14] Unfortunately, no benefit to the Commission materialized. Since *The Law Reform Commission Act* does not permit the Commission to receive funds from any source other than the provincial government, the $100,000 grant was paid by the Foundation to the government. Rather than passing all or part of this money through, the government simply reduced its contribution to the Commission's budget by a corresponding $100,000. In short, the Commission did not receive an additional cent by reason of the Foundation funding; the government, however, saved itself $100,000.

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[14]The additional money for consultants was supposed to have been the sum of $40,000. It should be noted that the Commission indicated at the time that, while a small budget for the hiring of consultants was desirable, its priority was an enlarged permanent staff.

At the time of the Foundation's establishment, the Commission expressed the view that it was the responsibility of the government to fund the on-going activities of the Commission and that funding from the Foundation should only be for items over and above the regular budget of the Commission. Indeed, the government of the day professed its agreement. The Commission continues to support this principle. We should return to the time when the provincial government provided the entire operating and salary budget of the Commission. At the same time, the Commission should be free to apply to the Manitoba Law Foundation for additional funding for projects which the Commission's budget cannot otherwise support. To do so, it is necessary that the Commission be granted the legal authority to receive funds from sources other than the provincial government.

We recommend:

RECOMMENDATION 15

That the Government of Manitoba be responsible for funding the full operating and salary budget of the Manitoba Law Reform Commission.

RECOMMENDATION 16

That the Commission be entitled to receive funds from any appropriate source, including the Government of Manitoba and the Manitoba Law Foundation.

We recognize that placing the responsibility for the full funding of the Commission with the provincial government leaves the Commission vulnerable to a future decision not to fund it. However, we see no alternative to this. We do not believe that amending the statute creating the Law Foundation to make the grant to the Commission permanent and mandatory is politically realistic (much as we might wish it). Similarly, we assume it is unlikely that the Commission will be granted a large permanent endowment (say, from lottery funds) which would allow us to fund the Commission's activities from the interest earned. We accept in the spirit of democracy the possibility that a future government may choose to accept the political consequences and, with the concurrence of the Legislature, eliminate the Commission's funding.

The ability to seek additional funds from the Manitoba Law Foundation should be of tremendous help to the Commission in allowing it to expand the number and size of the projects which it undertakes. However, we hope that the Foundation will recognize that the Commission is unlike any of the other applicants which may come before it seeking discretionary funding. First, the Commission is a public agency; it is the leading law reform body in the province, bearing the endorsement of the provincial Legislature and a statutory mandate to make recommendations directly to the Attorney General of the province. At the same time, the Commission's deliberations are entirely independent of government. This unique relationship with government, and the legitimacy which it engenders, has been the key to the Commission's success. Second, the Commission does not carry out its activities in an *ad hoc* fashion, engaging specific individuals to work on specific projects for pre-determined periods of time. Although the Commission does make occasional use of consultants and term employees, the vast majority of its work is undertaken by its permanent staff, who work on one or more projects as needs dictate. Project funding premised upon separate budgets and personnel dedicated to certain projects is unrealistic and not in keeping with the way in which the Commission operates. Discussions with other law reform bodies which receive monies from their provincial law foundation indicate that project funding has proved to be inefficient and ineffective. Our counterparts express an overwhelming preference for block funding of their activities; such funding, which is not specifically attached to any particular project, recognizes both the permanent structure of the Commission and the authority which the commissioners must exercise over the activities of the Commission. We hope that the Manitoba Law Foundation will be cognizant of these concerns in the formulation and application of its policies.

B. POWER TO SPEND

Just as the Commission presently lacks the power to receive monies, so does it lack the power to spend monies. The Commission cannot spend any of the money appropriated to it without prior approval from or subsequent justification to the Attorney General's Department. In our view, it is essential to the Commission's independence that, so long as it acts within the objects of the Act, it be free to spend the funds appropriated to it in the manner determined by the commissioners.

Accordingly, we recommend:

RECOMMENDATION 17

That the Commission have charge, control and management of its funds, with power to disburse, expend or otherwise deal with those funds, in such manner, consistent with its objects and The Law Reform Commission Act, as it may deem proper.

C. CONCLUSION

The continued existence and independence of the Manitoba Law Reform Commission requires a reasonable measure of financial security, within the context of our system of responsible government. As an agency of the provincial government, the Commission should be primarily funded by the provincial government. At the same time, it should be permitted to seek special funding over and above its normal requirements when appropriate projects present themselves. Once funded, the commissioners should be recognized as having the responsibility for the operation of the Commission; they should be granted the freedom to manage the Commission and to spend its funds in a manner reflecting the objects of *The Law Reform Commission Act* and their best judgment. Anything less will surely cast a debilitating shadow over the Commission and rob it of its credibility.

CHAPTER 4

A NEW LAW REFORM COMMISSION ACT

Many of the recommendations which have been made in this Report will require changes to *The Law Reform Commission Act* if they are to be implemented. Accordingly, we recommend:

RECOMMENDATION 18

That The Law Reform Commission Act be repealed and a new statute, substantially like the draft Act set forth in Appendix B to this Report, be enacted in its place.

In the balance of this Chapter, we set forth our proposed new Law Reform Commission Act, together with explanatory notes where appropriate. The draft Act is reproduced without commentary in Appendix B to this Report.[15]

THE LAW REFORM COMMISSION ACT

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

Definition.

1 In this Act,

"commission" means the Manitoba Law Reform Commission continued under this Act;

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[15]The draft Act has been produced in order to illustrate the recommendations contained in this Report. As we have no specialized training in statute drafting, technical improvements can no doubt be made.

"minister" means the Attorney General.

Comment: In accordance with Recommendation 3, the minister to whom the Commission reports is specified as the Attorney General.

Continuation of commission.

2(1) The "Manitoba Law Reform Commission", comprising the members to be appointed in accordance with section 3, is hereby continued as a body corporate.

Winding up.

2(2) In no case shall the affairs or the duties of the commission be wound up or altered unless the Legislature so provides.

Comment: This section reflects Recommendation 2. It is based upon section 34 of the Bank of Canada Act, R.S.C. 1985, c. B-2.

Appointments to commission.

3(1) The commission shall be composed of not fewer than five and not more than seven commissioners to be appointed by the Lieutenant Governor in Council on the recommendation of the minister,

(a) at least one of whom shall be a judge of the Court of Queen's Bench;

(b) at least one of whom shall be a full-time member of the Faculty of Law of the University of Manitoba;

(c) at least one of whom shall be a barrister and solicitor entitled to practise as such in the province, who is not in the full-time employ of the Government of Manitoba or any agency thereof; and

(d) at least one of whom shall not be a lawyer.

Comment: Although this subsection contemplates a Commission having five to seven members, our definite preference is that there always be seven commissioners (Recommendation 10). If this recommendation is accepted, this subsection might be re-worded to provide that "the commission shall be composed of seven commissioners. . . ."

The subsection requires that the Lieutenant Governor in Council appoint at least one judge, one law professor, one lawyer in private practice and one non-lawyer to the Commission (Recommendation 6). The remainder of the Commission's membership should be appointed by the Lieutenant Governor in Council in its discretion; it may choose to appoint additional persons falling within the above categories or may instead appoint others. We would, however, suggest that, in the event that seven commissioners are appointed, two of them should be non-lawyers.

Terms of office.

3(2) Subject to subsection (3), each commisssioner shall hold office for a term of three years during good behaviour.

Comment: The provision that commissioners hold office during good behaviour is intended to prevent the removal of commissioners for the purpose of a de facto abolition of the Commission. It implements Recommendation 7.

Terms of first commissioners.

3(3) Two of the first commissioners appointed by the Lieutenant Governor in Council shall be appointed to hold office for a term of one year during good behaviour, a further two of the first commissioners shall be appointed to hold office for a term of two years during good behaviour, and the rest of the first commissioners so appointed shall be appointed to hold office for a term of three years during good behaviour.

Comment: In order to ensure continuity, appointments to the Commission should expire at different times. Accordingly, we propose that the first appointments made to the Commission following the enactment of this statute be for staggered terms.

Disqualification of commissioner.

3(4) A commissioner who

(a) fails to attend three consecutive regular meetings of the commission, except where the commission by resolution excuses the absences; or

(b) in the case of a commissioner who is a barrister or solicitor, ceases to be a member in good standing of the Law Society of Manitoba; or

(c) is found by a court to be of unsound mind;

is disqualified from holding office as a commissioner, and the office held by that commissioner is thereupon vacated.

Vacancies.

3(5) Any vacancy among the commissioners resulting from resignation, disqualification or death before the expiry of a term of office shall be filled by a new appointment for the remainder of the unexpired term made in accordance with subsection (1).

Re-appointment.

3(6) A commissioner whose term of office has expired may be re-appointed.

Comment: This section implements Recommendation 8.

Appointment of successors.

3(7) A commissioner whose term of office has expired continues to hold office until a successor is appointed.

Transitional.

3(8) Notwithstanding anything in this section, those persons who are members of the commission on the coming into force of this section shall continue to hold office for the duration of their appointments and thereafter until re-appointed or replaced.

President.

4 The Lieutenant Governor in Council shall appoint one of the members of the commission, who shall be a lawyer, as president of the commission.

Comment: This implements Recommendation 5.

Remuneration.

5(1) The president and the remaining members of the commission shall be paid such remuneration as may be fixed by the Lieutenant Governor in Council.

Expenses.

5(2) The president and other members of the commission may be paid such reasonable out-of-pocket expenses incurred by them in the performance of their duties under this Act as may be approved by the commission.

Reduction of remuneration.

5(3) In no case shall the remuneration paid to the members of the commission be reduced unless the Legislature so provides.

Comment: As indicated in Recommendation 9, it should not be possible to indirectly abolish or otherwise diminish the Commission.

Duties of the commission.

6 The duties of the commission are to inquire into and consider any matter relating to law in Manitoba with a view to making recommendations for the improvement, modernization and reform of law, including, without limiting the generality of the foregoing:

(a) the removal of provisions of the law that are outdated or inconsistent;

(b) the maintenance and improvement of the administration of justice;

(c) the review of judicial and quasi-judicial procedures under any Act;

(d) the development of new approaches to and new concepts of law in keeping with and responsive to the changing needs of society and of individual members of that society; and

(e) any subject referred to it by the minister.

Powers of the commission.

7(1) In the performance of its duties, the commission may

(a) institute and direct research, as it deems necessary, including studies and research relating to the laws and legal systems and institutions of other jurisdictions in Canada or elsewhere;

(b) receive and consider any proposals for the reform of the law that may be made or referred to it by any body or person;

(c) undertake any study pursuant to its duties as a joint project of the commission and any one or more other law reform commissions, agencies or bodies in Canada or elsewhere, and enter into such contractual or other arrangements as it deems necessary for the carrying out of any such joint project, including arrangements for the provision of personnel or other resources of the commission to any such commission, agency or body;

and may do such other things and take such other measures as the commission deems advisable for the achievement of its objects.

***Comment:** No change has been made in the duties and mandate of the Commission. The powers of the Commission have been expanded so as to grant to it greater control over its affairs. This is consistent with the philosophy that the Commission should be free to determine its own activities within the context of the Act and its resources.*

Priority studies.

7(2) The minister may direct that the commission include any project in its program for studies and may direct that special priority be given to any project, and the commission shall be governed by any direction so made to it.

Comment: This section continues to provide that the Attorney General may refer projects to the Commission and may require that the Commission give special priority to projects designated by him. However, we have redrafted this section in an attempt to simplify it and make it more readable. It was formerly s. 6(2).

By-laws.

8 The commission may, by by-law, regulate its proceedings and provide generally for the conduct and management of its affairs.

Comment: The power to make by-laws has been expanded in recognition of the broader powers accorded to the Commission.

Meetings.

9(1) The commission shall meet at least four times in each year.

Quorum.

9(2) A majority of the commission shall constitute a quorum of the commission.

Employment of staff.

10(1) An executive director, and such lawyers, office staff and other employees as may be required for the commission's purposes, may be employed under The Civil Service Act.

Civil Service Acts apply.

10(2) The provisions of The Civil Service Act and The Civil Service Superannuation Act, and the regulations made under those Acts, apply to persons employed under subsection (1).

Comment: Section 10 implements recommendations 11, 12 and 13. The granting of civil service status to the Commission's employees should deter attempts to abolish or diminish the Commission by summarily dismissing its staff. It will also greatly assist in the recruitment of staff and reduce the high turnover rate which has plagued the Commission.

Remuneration and duties of employees.

11 The commission shall pay the salaries and remuneration of persons employed or appointed under section 10, and the commission shall prescribe their duties.

Comment: The level of remuneration and other benefits for the Commission's legal staff should be not less than that received by members of the Manitoba Association of Crown Attorneys (Recommendation 12). Current staff members should have their past service to the Commission recognized at the time of their admission to the civil service (Recommendation 14).

Temporary assistance.

12 The commission may engage on a temporary basis or for specific projects the services of persons having technical or specialized knowledge of any matter relating to the work of the commission, to advise and assist the commission in the performance of its duties under this Act and may fix and pay the remuneration and expenses of such persons.

Comment: In accordance with Recommendation 13, the requirements for the prior approval of the minister has been deleted.

Application of subsection 12(4) of The Civil Service Act.

13(1) Notwithstanding subsection 14(3), for the purposes of applying subsection 12(4) of The Civil Service Act to persons employed under section 10, the funds of the commission shall be deemed to form part of the Consolidated Fund.

Comment: This is a rather technical section. Subsection 12(4) of The Civil Service Act provides that no member of the civil service shall receive any remuneration out of the Consolidated Fund in addition to the amount that he or she is entitled to receive under the pay plan. Since the Commission has control of its funds pursuant to s. 14(3) of the draft Act, this provision would not otherwise apply.

Agency of government.

13(2) The commission is an agent of Her Majesty in right of Manitoba.

Funds of commission.

14(1) The funds of the commission consist of monies received from any source including, without restricting the generality of the foregoing, monies granted to it for its use by the Legislature of Manitoba or the Manitoba Law Foundation.

Comment: This section implements Recommendation 16.

Payment from Consolidated Fund.

14(2) For the purposes of subsection (1), the Minister of Finance, on the requisition of the minister, may pay grants to the commission from and out of the Consolidated Fund with monies authorized for the purpose by the Legislature.

Use of funds.

14(3) The commission has charge, control and management of its funds, and may disburse, expend or otherwise deal with those funds, in such manner, consistent with its objects and with this Act, as it may deem proper.

Comment: This section implements Recommendation 17 and plays a key part in ensuring the independence of the Commission.

Investment.

14(4) Without restricting the generality of subsection (3), the commission may invest any monies not immediately required for its purposes in any investments authorized by the Minister of Finance.

Annual report to minister.

15(1) The commission shall report from time to time to the minister and shall make an annual report to the minister on the activities of the commission for each year.

Special report to minister.

15(2) When the commission reviews, considers or inquires into any matter referred to it by the minister, the commission shall make a report to the minister with respect to that matter at the conclusion of the deliberations.

Comment: Subsections 15(1) and 15(2) are carried forward from the existing Act. They are consistent with the view that the Commission should continue to report to the Attorney General (Recommendation 3).

Publication of reports.

15(3) The commission may publish any report made pursuant to this section.

Comment: This provision essentially institutionalizes an arrangement that the Commission has had with Attorneys General for many years, namely, that the Commission will not release its Reports to the public for a period of one month after their submission to the Attorney General or until copies are received by it from the printer (whichever is later), but will be free to release them at any point thereafter. This policy enables the Attorney General to familiarize himself with the Reports prior to their public release, but prevents him from shelving Reports and keeping them from the public.

Application of Corporations Act.

16 The Corporations Act does not apply to the commission.

Reference in Continuing Consolidation.

17 This Act may be referred to as chapter L95 of the Continuing Consolidation of the Statutes of Manitoba.

Repeal.

18 The Law Reform Commission Act, being chapter L95 of the Continuing Consolidation of the Statutes of Manitoba, is repealed.

Commencement of Act.

19 This Act comes into force on the day it receives the royal assent.

CHAPTER 5

CONCLUSION AND SUMMARY OF RECOMMENDATIONS

In accordance with the terms of reference specified by the Attorney General, we have attempted in this Report to make recommendations which, when implemented, will have the effect of increasing the independence of the Manitoba Law Reform Commission and better assuring its future existence. We believe that the proposals which we have made will make important contributions to achieving these goals. Most importantly, we believe that our proposals are reasonable and realistic. We hope that the reader will agree that the framework which we envision for the Manitoba Law Reform Commission is one which is in the best interests of all Manitobans and not just in the best interests of those who are closely involved in the operations of the Commission. We have striven to avoid the sin of overreaching self-indulgence and hope that more dispassionate observers will judge our efforts a success.

The implementation of our recommendations will do much to place the Commission on a surer footing for the future. However, we recognize that certain factors essential to the long-term success of this agency lie beyond the reach of formal reform efforts. Foremost among these is, of course, the continued support of the Attorney General and his colleagues; no body affiliated with government can long survive if the political will to promote its objectives is lost. Of almost equal importance is the support of the Attorney General's Department.

The Commission itself must accept responsibility for its future existence and independence. The most important means of discharging this responsibility is obviously the production of well-researched, well-considered Reports. However, we recognize that the Commission must go beyond this. It is essential that the Commission take a greater role in expanding public awareness of its activities and its place in society. While this will take up some of its resources (and we certainly do not expect that there will be much to spare in the future), it is a challenge which we intend to take up with vigour and enthusiasm.

The following is a summary of the recommendations made in this Report.

1. That the Manitoba Law Reform Commission continue to be a body constituted by an Act of the Manitoba Legislature. (p. 6)

2. That in no case should the affairs or the duties of the Commission be wound up or altered unless the Legislature so provides. (p. 6)

3. That the legislation creating the Commission continue to provide that it report to the Attorney General. (p. 7)

4. That the members of the Commission continue to be appointed by the Lieutenant Governor in Council on the advice of the Attorney General. (p. 9)

5. That the Lieutenant Governor in Council, upon the recommendation of the Attorney General, designate one of the members of the Commission, who shall be a lawyer, to be its president. (p. 9)

6. That the Commission be composed of:

   (a) at least one judge of the Court of Queen's Bench;

   (b) at least one full-time member of the Faculty of Law of the University of Manitoba;

   (c) at least one lawyer in private practice;

   (d) at least one person who is not a lawyer; and

   (e) such other persons as the Lieutenant Governor in Council may think fit. (p. 10)

7. That the members of the Commission hold office for fixed terms of three years during good behaviour. (p. 11)

8. That the members of the Commission be eligible for re-appointment. (p. 11).

9. That in no case should the remuneration paid to the members of the Commission be reduced unless the Legislature so provides. (p. 11)

10. That the Manitoba Law Reform Commission be comprised of 7 members (commissioners). (p. 12)

11. That the staff of the Commission be members of the civil service. (p. 13)

12. That the level of remuneration and other benefits received by the legal staff of the Commission be no less than that received by members of the Manitoba Association of Crown Attorneys. (p. 13)

13. That the hiring of staff members or consultants should be the responsibility of the Commission. (p. 14)

14. That prior years of service to the Commission be fully recognized for the purpose of determining remuneration and other benefits when the staff of the Commission are admitted to the civil service. (p. 14)

15. That the Government of Manitoba be responsible for funding the full operating and salary budget of the Manitoba Law Reform Commission. (p. 17)

16. That the Commission be entitled to receive funds from any appropriate source, including the Government of Manitoba and the Manitoba Law Foundation. (p. 17)

17. That the Commission have charge, control and management of its funds, with power to disburse, expend or otherwise deal with those funds, in such manner, consistent with its objects and *The Law Reform Commission Act*, as it may deem proper. (p. 19)

18. That *The Law Reform Commission Act* be repealed and a new statute, substantially like the draft Act set forth in Appendix B to this Report, be enacted in its place. (p. 20)

This is a Report pursuant to section 5(3) of *The Law Reform Commission Act*, signed this 23rd day of November, 1988.

Clifford H.C. Edwards, Chairman

John C. Irvine, Commissioner

Gerald O. Jewers, Commissioner

Eleanor R. Dawson, Commissioner

Pearl K. McGonigal, Commissioner

APPENDIX A

THE LAW REFORM COMMISSION ACT
C.C.S.M. c. L95
(assented to July 21, 1970)

CHAPTER L95

THE LAW REFORM COMMISSION ACT

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

Definitions.
1 In this Act,

"commission" means The Manitoba Law Reform Commission continued under this Act; ("Commission")

"minister" means a member of the Executive Council charged by the Lieutenant Governor in Council with the administration of this Act. ("ministre")

Continuation of commission.
2(1) "The Manitoba Law Reform Commission", consisting of not more than seven members to be appointed by the Lieutenant Governor in Council on the recommendation of the minister is hereby continued.

Chairman.
2(2) The Lieutenant Governor in Council shall appoint one of the members as chairman of the commission.

Appointments to commission.
3(1) The chairman of the commission shall be appointed for a term not exceeding seven years and the remaining members of the commission shall be appointed for a term not exceeding three years.

CHAPITRE L95

LOI SUR LA COMMISSION DE RÉFORME DE DROIT

SA MAJESTÉ, sur l'avis et du consentement de l'Assemblée législative du Manitoba, édicte :

Définitions
1 Les définitions qui suivent s'appliquent à la présente loi.

"Commission" La Commission manitobaine de réforme du droit prorogée par la présente loi. ("commission")

"ministre" Membre du Conseil exécutif chargé par le lieutenant-gouverneur en conseil de l'application de la présente loi. ("minister")

Prorogation de la Commission
2(1) Est prorogée la Commission manitobaine de réforme du droit, composée d'au plus sept commissaires nommés par le lieutenant-gouverneur en conseil sur recommandation du ministre.

Président
2(2) Le lieutenant-gouverneur en conseil nomme un des commissaires à titre de président de la Commission.

Durée du mandat
3(1) La durée maximale du mandat du président est de sept ans et celle du mandat des autres commissaires est de trois ans.

Eligibility for re-appointments.
3(2) The chairman and each member of the commission may be re-appointed as members of the commission; and the chairman is eligible for re-appointment as the chairman of the commission.

Remuneration.
4(1) The chairman and the remaining members of the commission shall be paid such remuneration as may be fixed by the Lieutenant Governor in Council.

Expenses.
4(2) The chairman and other members of the commission may be paid such reasonable out-of-pocket expenses incurred by them in the performance of their duties under this Act as may be approved by the minister.

Duties of commission.
5(1) The duties of the commission are to inquire into and consider any matter relating to law in Manitoba with a view to making recommendations for the improvement, modernization and reform of law, including, without limiting the generality of the foregoing

(a) the removal of provisions of the law that are outdated or inconsistent;

(b) the maintenance and improvement of the administration of justice;

(c) the review of judicial and quasi-judicial procedures under any Act;

(d) the development of new approaches to and new concepts of law in keeping with and responsive to the changing needs of society and of individual members of that society; and

(e) any subject referred to it by the minister.

Annual report to minister.
5(2) The commission shall report from time to time to the minister and shall make an annual report to the minister on the activities of the commission for each year.

Special report to minister.
5(3) When the commission reviews, considers or inquires into any matter referred to it by the minister, the commission shall make a report to the minister with respect to that matter at the conclusion of the deliberations.

Nouveau mandat
3(2) Le président et les autres commissaires peuvent recevoir un nouveau mandat, à des fonctions identiques ou non.

Rémunération
4(1) Le président et les autres commissaires reçoivent la rémunération fixée par le lieutenant-gouverneur en conseil.

Frais
4(2) Le président et les autres commissaires sont indemnisés des frais raisonnables engagés dans l'exercice des fonctions qui leur sont confiées en application de la présente loi, sous réserve de l'approbation du ministre.

Fonctions de la Commission
5(1) La Commission a pour fonctions de faire enquête sur les questions se rapportant au droit du Manitoba et de les étudier en vue de faire des recommandations pour améliorer, actualiser et réformer le droit, et notamment, en vue :

a) de supprimer les dispositions du droit qui sont désuètes ou incompatibles;

b) de maintenir et d'améliorer l'administration de la justice;

c) d'examiner les procédures judiciaires et quasi-judiciaires prévues par une loi quelconque;

d) d'élaborer de nouvelles méthodes et de nouveaux concepts de droit correspondant à l'évolution des besoins de la société et des individus qui la composent;

e) de traiter tout autre sujet que le ministre lui soumet.

Rapport annuel
5(2) La Commission présente à l'occasion un rapport au ministre et elle lui présente en outre un rapport annuel sur ses activités durant chaque année.

Rapport spécial
5(3) La Commission présente au ministre un rapport sur toute question que le ministre lui soumet, après la fin de ses délibérations sur cette question.

Powers of the commission.

6(1) In the performance of its duties, the commission may

(a) institute and direct research of a legal nature, as it deems necessary, including studies and research relating to the laws and legal systems and institutions of other jurisdictions in Canada or elsewhere;

(b) receive and consider any proposals for the reform of the law that may be made or referred to it by any body or person; and

(c) in its discretion and with the concurrence of the minister undertake any study pursuant to its duties as a joint project of the commission and any one or more other law reform commissions, agencies or bodies in Canada or elsewhere, and enter into such contractual or other arrangements as it deems necessary for the carrying out of any such joint project, including arrangements for the provision of personnel or other resources of the commission to any such commission, agency or body.

Priority studies.

6(2) The commission shall include in any program for studies prepared by it any study requested by the minister to which, in his opinion, it is desirable in the public interest that special priority should be given by the commission; and the commission shall, in determining its priorities for studies in relation to any such program be governed by any request so made to it.

By-laws.

6(3) The commission may make by-laws

(a) respecting the calling of meetings of the commission;

(b) respecting the conduct of business at meetings of the commission and the establishment of committees of the commission, the delegation of duties to any such committees and the fixing of quorums for meetings of the committees.

Hiring of employees.

6(4) For the facility of the performance of its duties and of the exercise of its powers provided for in subsections (1) and (2), the commission may

Pouvoirs de la Commission

6(1) La Commission peut, dans l'exercice de ses fonctions :

a) entreprendre et diriger des recherches de nature juridique qu'elle juge nécessaires, notamment des études et des recherches relatives au droit, aux systèmes et aux institutions juridiques d'autres autorités législatives au Canada ou ailleurs;

b) recevoir et examiner toutes propositions de réforme du droit qui lui sont formulées ou transmises par un organisme ou une personne;

c) à sa discrétion et avec l'accord du ministre, faire toute étude conformément à ses fonctions, à titre de projet conjoint de la Commission et d'une ou de plusieurs autres commissions, ou d'un ou de plusieurs autres organismes de réforme du droit au Canada ou ailleurs, et elle peut conclure les contrats ou les autres arrangements qu'elle juge nécessaires à la réalisation d'un tel projet conjoint, notamment des arrangements visant à fournir à une telle commission ou à un tel organisme du personnel ou d'autres moyens dont dispose la Commission.

Priorité des études

6(2) La Commission doit inclure, dans tout programme d'études qu'elle prépare, toute étude demandée par le ministre, et à laquelle il estime souhaitable dans l'intérêt public que la Commission accorde une priorité spéciale; la Commission doit, en établissant l'ordre de priorité des études relatives à ce programme, respecter toute demande qui lui est ainsi faite.

Règlements administratifs

6(3) La Commission peut prendre des règlements administratifs :

a) concernant la convocation de ses réunions;

b) concernant la procédure à ses réunions, la création de comités, la délégation d'attributions à ces comités et la fixation des quorums de leurs réunions.

Personnel

6(4) Pour faciliter l'exercice de ses fonctions et de ses pouvoirs prévus aux paragraphes (1) et (2), la Commission peut :

(a) hire such employees as may be necessary for these purposes; and

(b) on a temporary basis or for specific projects, engage the services of persons having technical or specialized knowledge of any matter relating to the work of the commission, to advise and assist the commission in the performance of its duties under this Act;

and, with the approval of the minister, may fix and pay the remuneration and expenses of such persons.

Meetings.

7(1) The commission shall meet at least four times in each year.

Quorum.

7(2) Three members of the commission constitute a quorum of the commission.

a) engager le personnel nécessaire à cette fin;

b) à titre provisoire ou pour des projets déterminés, retenir les services de personnes possédant des connaissances techniques ou spécialisées sur toute question relative à ses travaux, pour la conseiller et l'aider à remplir les fonctions que lui attribue la présente loi.

Avec l'approbation du ministre, elle peut fixer et payer la rémunération et les frais de ces personnes.

Réunions

7(1) La Commission tient un minimum de quatre réunions par an.

Quorum

7(2) Le quorum est constitué par trois commissaires.

The Queen's Printer
for the Province of Manitoba

L'Imprimeur de
la Reine du Manitoba

APPENDIX B

PROPOSED DRAFT ACT:
THE LAW REFORM COMMISSION ACT

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

Definition.
1 In this Act,

"commission" means the Manitoba Law Reform Commission continued under this Act;

"minister" means the Attorney General.

Continuation of commission.
2(1) The "Manitoba Law Reform Commission", comprising the members to be appointed in accordance with section 3, is hereby continued as a body corporate.

Winding up.
2(2) In no case shall the affairs or the duties of the commission be wound up or altered unless the Legislature so provides.

Appointments to commission.
3(1) The commission shall be composed of not fewer than five and not more than seven commissioners to be appointed by the Lieutenant Governor in Council on the recommendation of the minister,

(a) at least one of whom shall be a judge of the Court of Queen's Bench;
(b) at least one of whom shall be a full-time member of the Faculty of Law of the University of Manitoba;
(c) at least one of whom shall be a barrister and solicitor entitled to practise as such in the province, who is not in the full-time employ of the Government of Manitoba or any agency thereof; and
(d) at least one of whom shall not be a lawyer.

Terms of office.
3(2) Subject to subsection (3), each commisssioner shall hold office for a term of three years during good behaviour.

Terms of first commissioners appointed by L.G.I.C.
3(3) Two of the first commissioners appointed by the Lieutenant Governor in Council shall be appointed to hold office for a term of one year during good behaviour, a further two of the first commissioners shall be appointed to hold office for a term of two years during good behaviour, and the rest of the first commissioners so appointed shall be appointed to hold office for a term of three years during good behaviour.

Disqualification of commissioner.

3(4) A commissioner who

(a) fails to attend three consecutive regular meetings of the commission, except where the commission by resolution excuses the absences; or

(b) in the case of a commissioner who is a barrister or solicitor, ceases to be a member in good standing of the Law Society of Manitoba; or

(c) is found by a court to be of unsound mind;

is disqualified from holding office as a commissioner, and the office held by that commissioner is thereupon vacated.

Vacancies.

3(5) Any vacancy among the commissioners resulting from resignation, disqualification or death before the expiry of a term of office shall be filled by a new appointment for the remainder of the unexpired term made in accordance with subsection (1).

Re-appointment.

3(6) A commissioner whose term of office has expired may be re-appointed.

Appointment of successors.

3(7) A commissioner whose term of office has expired continues to hold office until a successor is appointed.

Transitional.

3(8) Notwithstanding anything in this section, those persons who are members of the commission on the coming into force of this section shall continue to hold office for the duration of their appointments and thereafter until re-appointed or replaced.

President.

4 The Lieutenant Governor in Council shall appoint one of the members of the commission, who shall be a lawyer, as president of the commission.

Remuneration.

5(1) The president and the remaining members of the commission shall be paid such remuneration as may be fixed by the Lieutenant Governor in Council.

Expenses.

5(2) The president and other members of the commission may be paid such reasonable out-of-pocket expenses incurred by them in the performance of their duties under this Act as may be approved by the commission.

Reduction of remuneration.
5(3) In no case shall the remuneration paid to the members of the commission be reduced unless the Legislature so provides.

Duties of the commission.
6 The duties of the commission are to inquire into and consider any matter relating to law in Manitoba with a view to making recommendations for the improvement, modernization and reform of law, including, without limiting the generality of the foregoing:

(a) the removal of provisions of the law that are outdated or inconsistent;
(b) the maintenance and improvement of the administration of justice;
(c) the review of judicial and quasi-judicial procedures under any Act;
(d) the development of new approaches to and new concepts of law in keeping with and responsive to the changing needs of society and of inidividual members of that society; and
(e) any subject referred to it by the minister.

Powers of the commission.
7(1) In the performance of its duties, the commission may

(a) institute and direct research, as it deems necessary, including studies and research relating to the laws and legal systems and institutions of other jurisdictions in Canada or elsewhere;
(b) receive and consider any proposals for the reform of the law that may be made or referred to it by any body or person;
(c) undertake any study pursuant to its duties as a joint project of the commission and any one or more other law reform commissions, agencies or bodies in Canada or elsewhere, and enter into such contractual or other arrangements as it deems necessary for the carrying out of any such joint project, including arrangements for the provision of personnel or other resources of the commission to any such commission, agency or body;

and may do such other things and take such other measures as the commission deems advisable for the achievement of its objects.

Priority studies.
7(2) The minister may direct that the commission include any project in its program for studies and may direct that special priority be given to any project, and the commission shall be governed by any direction so made to it.

By-laws.
8 The commission may, by by-law, regulate its proceedings and provide generally for the conduct and management of its affairs.

Meetings.
9(1) The commission shall meet at least four times in each year.

Quorum.
9(2) A majority of the commission shall constitute a quorum of the commission.

Employment of staff.
10(1) An executive director, and such lawyers, office staff and other employees as may be required for the commission's purposes, may be employed under The Civil Service Act.

Civil Service Acts apply.
10(2) The provisions of The Civil Service Act and The Civil Service Superannuation Act, and the regulations made under those Acts, apply to persons employed under subsection (1).

Remuneration and duties of employees.
11 The commission shall pay the salaries and remuneration of persons employed or appointed under section 10, and the commission shall prescribe their duties.

Temporary assistance.
12 The commission may engage on a temporary basis or for specific projects the services of persons having technical or specialized knowledge of any matter relating to the work of the commission, to advise and assist the commission in the performance of its duties under this Act and may fix and pay the remuneration and expenses of such persons.

Application of subsection 12(4) of the Civil Service Act.
13(1) Notwithstanding subsection 14(3), for the purposes of applying subsection 12(4) of The Civil Service Act to persons employed under section 10, the funds of the commission shall be deemed to form part of the Consolidated Fund.

Agency of government.
13(2) The commission is an agent of Her Majesty in right of Manitoba.

Funds of commission.
14(1) The funds of the commission consist of monies received from any source including, without restricting the generality of the foregoing, monies granted to it for its use by the Legislature of Manitoba or the Manitoba Law Foundation.

Payment from Consolidated Fund.
14(2) For the purposes of subsection (1), the Minister of Finance, on the requisition of the minister, may pay grants to the commission from and out of the Consolidated Fund with monies authorized for the purpose by the Legislature.

Use of funds.
14(3) The commission has charge, control and management of its funds, and may disburse, expend or otherwise deal with those funds, in such manner, consistent with its objects and with this Act, as it may deem proper.

Investment.
14(4) Without restricting the generality of subsection (3), the commission may invest any monies not immediately required for its purposes in any investments authorized by the Minister of Finance.

Annual report to minister.
15(1) The commission shall report from time to time to the minister and shall make an annual report to the minister on the activities of the commission for each year.

Special report to minister.
15(2) When the commission reviews, considers or inquires into any matter referred to it by the minister, the commission shall make a report to the minister with respect to that matter at the conclusion of the deliberations.

Publication of reports.
15(3) The commission may publish any report made pursuant to this section.

Application of Corporations Act.
16 The Corporations Act does not apply to the commission.

Reference in Continuing Consolidation.
17 This Act may be referred to as chapter L95 of the Continuing Consolidation of the Statutes of Manitoba.

Repeal.
18 The Law Reform Commission Act, being chapter L95 of the Continuing Consolidation of the Statutes of Manitoba, is repealed.

Commencement of Act.
19 This Act comes into force on the day it receives the royal assent.